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EXAMINER

SAYALA, CHHAYA D

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Arguments

Applicant's arguments filed 2/1/2008 have been fully considered but they are not persuasive.

Prior Art Rejections

Applicant's remarks at pages 6-7 are identical to the remarks made at pages 6-8 of the response filed 9/17/2007, as are remarks directed to the Cook reference and therefore the remarks made in the Final Office action are being adopted here:

First, summarizing the rejection,

- Livingstone and Johnston establish that poultry fat was part of animal feeds in prior art,
- Schaub teaches that hydrogenated fats in feeds helped digestibility and teaches processes to hydrogenate fats,
- Cook teaches that prior art already was aware of the fact that saturated fats in feeds assured firm fat in meats (pork),
- Evans et al. teach that hydrogenated feeds with 5-35 IV, fed in amounts no more than 10 wt% aided digestibility and carcass firmness and meat quality. Evans et al. also teach that in prior art, unsaturated vegetable oils or animal fats with IVs of 80 or 45, respectively, have been used. Therefore, to hydrogenate poultry fat and add it in the same amounts as Evans et al. and to optimize the fat ration so that it is neither all fully saturated fats nor hydrogenated fats, since this was found non-beneficial in terms of digestibility (col. 2, lines 10-15), but to use a diet that includes highly (not fully) saturated or partially hydrogenated animal or

vegetable fat, such as hydrogenated poultry fat, and to correspondingly optimize the IV values, for example to 36, would have been obvious and within the ambit of ordinary skill. After all, Evans et al. teach all the elements except that the fat is from poultry, which was commonplace in animal feeds at the time the invention was made, and that the IV value was greater than 35, where fats with IV values over 35 were also used in animal feeds at the time the invention was made (see Evans et al., col. 1, lines 45-50).

On page 6, applicant states that none of the references shows "0.5 to 5 percent by weight hydrogenated poultry fat". This in fact, is true, which is the reason for the use of 35 USC 103. However, the combination of references, given the level of skill in the art and the amount of guidance, the reasons disclosed in each reference as explained above in great detail, would render obvious the claimed invention.

Livingston has been faulted for its teaching of poultry fat only in the abstract and for mixing the fat with litter, and not disclosing hydrogenated fat in the claimed amount. First, litter is not excluded from the feed of the instant claims. Next, swine/hog/pig feed do not exclude waste or litter. Applicant states that the poultry fat of the waste could not be hydrogenated. Livingston has been applied for its showing that poultry fat was always a part of animal feeds in prior art.

Johnston, applicant states, teaches animal feed, but particularly pet food, where antioxidants are added to the fat to increase shelf-life. The reference, applicant states, does not teach hydrogenated poultry fat, and the amounts claimed herein. Again,

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Johnston has been applied for its showing that poultry fat was always a part of animal feeds in prior art.

Applicant has faulted the examiner's application of Cook by stating that only one statement has been made by Cook regarding feeding pigs saturated fats. Nonetheless, an important statement, one that discloses that saturated fats in feeds produces firm fat in the meat. Such disclosure, even if a single statement, is still pertinent to the claimed invention and is not fatal to the combination because it is a single statement because it establishes prior art knowledge.

Schaub, claims 2 and 4 are as follows:

2. A method according to claim 1, wherein said powder of fat particles is fed to an animal in the form a fat-containing ration containing fat in an amount in excess of about 5%.
4. The method of claim 2, wherein at least a portion of the selected fat is hydrogenated prior to being fed to an animal.

Scaub, therefore, teaches feeding an animal hydrogenated fat in an amount **in excess of about 5%**.

Evans teaches "highly saturated (partially hydrogenated) tallow or vegetable oil with iodine values between **5 and 35**".

Applicant's claims recite

1) hydrogenated poultry fat in an amount about 0.5 to less **than about 5 percent by weight**

2) poultry fat having an iodine value greater than **about 35**.

As can be seen from the above comparison, "about 5%" (reference) overlaps with "about 5%" (claim). This is NOT patentably distinct.

With regard to the IV, 5-35 (reference) overlaps with "greater than about 35" (claim), Since the endpoint reads on '35'.

Even if an excess of about 5% of poultry fat is considered, such as 5.1%, and less than about 5% (of the claim), such as 4.95%, it is not clear how this is patentably distinguishable and there is nothing of record to make it so.

Similarly, if an iodine value of 35.5 or even 36 is considered, which is greater than about 35 (claim) compared to the iodine value of 35 of Evans, it is not clear if applicant has established a result that is patentably distinct from that of Evans.

There is no criticality established for the ranges/values claimed over these reference values discussed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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/C. SAYALA/

Primary Examiner, Art Unit 1794